THE MAGIC OF THE PRIVATE SEAL.

The history of the seal and how it came to play such an important part in our substantive law through its use in attesting documents at a time when people could not write, and the leading rules which have grown up out of such use are known to every lawyer.

But the various changes and modifications which have taken place in the law of New York regarding the seal and the exceptions which have arisen in an effort to evade the harshness and rigor of the first few simple principles of specialties and the absurdities to which these rules and exceptions have now led us are not so fully understood. It is the purpose of this article to summon attention to the complex condition of our present law applicable to sealed instruments.

Beginning with the law as it was at the time of Chancellor Kent, which required the seal to be an impression on wax, we find him giving expression, in *Warren* v. *Lynch*,[1] to the following:

"A scrawl with a pen is not a seal, and deserves no notice. . . . The calling a paper a deed will not make it one, if it want the requisite formalities. . . . The policy of the rule consists in giving ceremony and solemnity to the execution of important instruments, by means of which the attention of the parties is more certainly and effectually fixed, and frauds less likely to be practiced upon the unwary."

A seal at common law was an impression upon wax or wafer or some tenacious substance capable of being impressed, and it was to the use of such formality that the Chancellor made reference. In his Commentaries,[2] referring to the scroll as a substitute for the seal, he had this to say:

"This is destroying the character of seals, and it is, in effect, abolishing them, and with them the definition of a deed or specialty, and all distinction between writings sealed, and writings not sealed. . . . To abolish the use of seals by the substitution of a flourish of the pen, and yet continue to call the instrument which has such a substitute, a deed or writing, sealed and delivered within the purview of the common or the statute law of the land, seems to be a misnomer."

This remained the law of this State until the enactment of § 13 of Chapter 677 of the Laws of 1892, known as § 44 of the General Construction Law, reading:—

[1](N. Y. 1810) 5 Johns. 238.

[2]Vol. 4, *453.

"The private seal of a person, other than a corporation, to any instrument or writing shall consist of a wafer, wax or other similar adhesive substance affixed thereto, or of paper or other similar substance affixed thereto, by mucilage or other adhesive substance, or of the word 'seal,' or the letters 'L. S.,' opposite the signature."[3]

The use of the wax or adhesive substance required by the common law, while not modified until 1892 as just stated, was relaxed as to the seals of courts and public officers, in 1829, by the Revised Statutes,[4] so as to enable the impression to be made directly upon paper; and by the Laws of 1848, Chapter 197, a corporation was permitted to make a like use of its seal.

Formerly, unless a deed of a fee were sealed and the copy of it as recorded showed that a seal had been affixed the title to the property was held to be defective and unmarketable.[5] Since the real property law,[6] however, a seal is no longer necessary to any conveyance of real property.[7]

This, briefly, outlines the statutory changes which have been made regarding the nature and necessity of the private seal. At the present day, its use is not required to give validity to instruments, unless it be in the case of a release or a bond, and as to the latter the failure to use a seal would not render the bond void, but would reduce it to a simple contract as will later appear. Of course there may be special statutes requiring the seal in particular cases; but these generally refer to corporations.

While the necessity for the private seal has virtually gone, its use still remains, with many serious and ensnaring effects. A study of the cases will convince one that people make use of the printed or written "L. S." without fully appreciating its effect.

Perhaps the earliest inroad into the rigors of the common law regarding sealed instruments was the Statute of 1829, regarding consideration. At common law an instrument under seal did not require a consideration. The books frequently spoke of a seal as implying a consideration; but the correct statement of the rule

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[3]See Curtis *v.* Leavitt (1857) 15 N. Y. 9; Town of Solon *v.* Williamsburgh Savings Bank (1889) 114 N. Y. 122.

[4]2 R. S. 404, § 61 (1829).

[5]Todd *v.* Union Dime Savings Institution (N. Y. 1887) 20 Abb. N. C. 270, reversed on facts (1890) 118 N. Y. 337.

[6]Laws of 1896, c. 547, § 243.

[7]Leask *v.* Horton (N. Y. 1902) 39 Misc. 144; Stanton *v.* Granger (N. Y. 1908) 125 App. Div. 174; Fitzpatrick *v.* Graham (C. C. A. 1903) 122 Fed. 401.

is that a sealed instrument required no consideration.[8] By the Revised Statutes,[9] a seal upon an instrument became only presumptive evidence of a consideration which could be rebutted, and this was continued in our Code of Civil Procedure, § 840, as to executory instruments. Under this change in the law a deed and a general release are held to be executed instruments when delivered and the seal conclusive evidence of consideration.[10] A mortgage, on the other hand, has been held to be an executory instrument within the meaning of this section, so that the presumption of a consideration arising from the seal may be rebutted and the instrument declared void for want of consideration.[11] This distinction between the effect of the seal, as to consideration, upon executory and executed instruments is not always appreciated.[12]

Equity did not always give to the seal the same importance as the common law, and where by the latter a seal was necessary to give validity to the instrument, the former would sometimes give its aid to relieve from the effects of a failure to seal. Thus in the early case of *Wadsworth* v. *Wendell,*[13] one John Thomas, a soldier, signed what purported to be a conveyance reciting that he had set his hand and seal thereto, but without in fact having affixed the seal. The opinion stated:

"Though it be a defective conveyance, for want of a seal, yet it created such an equity as to bind the lands in the hands of the soldier and of his heirs. . . . It was not intended to be an agreement only to convey, but an actual present conveyance of all his right and title; and, in equity, it did pass it. The omission to affix a seal, was a mere mistake, contrary to the intention of the parties, . . ."

This was followed in *Grandin* v. *Hernandez, Town of Solon* v. *Williamsburgh Savings Bank, and Barnard* v. *Gantz.*[14] The Town of Solon case related to certain county bonds which were improperly sealed. They had been issued in aid of the Utica, Chenango and Cortland Railroad Company through proceedings had for that purpose before the County Judge. The statute provided that it should be the duty of the commissioners to execute

[8]Holmes on the Common Law.

[9]2 R. S. 406, § 77.

[10]Stiebel *v.* Grosberg (1911) 202 N. Y. 266.

[11]Baird *v.* Baird (1895) 145 N. Y. 659.

[12]See Fuller *v.* Artman (N. Y. 1893) 69 Hun 546; Baird *v.* Baird (1895) 145 N. Y. 659, 665.

[13](N. Y. 1821) 5 Johns. Ch. 224.

[14](N. Y. 1883) 29 Hun 399; (1889) 114 N. Y. 122; (1893) 140 N. Y. 249.

the bonds of a municipal corporation attested by the seal of such corporation affixed, if it had a common seal, and if not, then by their individual seals and signed and certified by them. As the Town had no seal the commissioners put "L. S." opposite their names which under the law as it then existed was no seal at all. The court said:

"Inasmuch as they [the bonds] were issued and delivered by the commissioners in the performance of their duty and upon a consideration, the mistake or failure to affix their seals does not defeat the enforceable validity of the bonds. At all events, as the commissioners intended to properly and effectually execute the bonds, and the omission of the seals was caused by their misunderstanding, mistake or inadvertance, the court of equity may afford the relief requisite to the party justly entitled to the benefit of the instruments, and to render them enforceable."

The facts in the Barnard case are even stronger in showing to what extent a court of equity has gone in disregarding a fundamental rule of sealed instruments. A deed of trust, properly sealed, executed and delivered, was sought to be revoked by an unsealed instrument. Judge O'Brien, in the opinion, said:

"It is urged that the instrument of revocation is inoperative to annul a deed, as it was not under seal and was not delivered, upon the principle that a deed can only be modified or revoked by an instrument of equal solemnity. The signature to the paper is followed by the letters L. S. in brackets. She evidently intended to seal the instrument, and where that intention is manifest upon the paper itself, a court of equity will assume that it is sealed or grant the same relief as though a common-law seal was attached."

Then follow words which weaken still further the law regarding sealed instruments, or engraft upon it an exception which renders the seal in such instances mere surplusage:

"The instrument, however," continues Judge O'Brien, "which transferred the bonds to the trustees and beneficiaries, though under seal, was a mere assignment of personal property, and would have been precisely as effectual if no seal had been affixed. The seal, therefore, added nothing to the solemnity, force or effect of the instrument, and if a provision for future revocation was intended to be inserted, so as to make it revocable in fact, that result could have been accomplished by any instrument, in writing, signed by the party authorized to revoke."

Where the authority to revoke exists, can a power to convey a freehold granted by an instrument under seal be revoked by an unsealed writing now that the seal is no longer necessary to a

deed in fee? In *Farrington* v. *Brady*,[15] it was decided that an executory contract under seal cannot be modified or released before breach by an unexecuted parol agreement, but that a written contract not under seal may be.

The affixing of the seal, said Chancellor Kent, is a formality calling the attention of the signer to the importance of the document, and giving dignity to the transaction. This purpose is certainly not accomplished by the rule that one seal may be adopted by many parties. Thus in *Rusling* v. *Union Pipe and Construction Company*,[16] the contract was signed "Union Pipe & Construction Co., by Calvin Detrick, Pres't," as one of the parties, and by Joseph L. Rusling, as the other party. The seal appeared opposite Rusling's name only, and yet it was held to be the seal of the corporation, making applicable the twenty years statute of limitations. The formality which raises simple contracts to the dignity of specialties may thus open the way for deception and fraud. Even in such a case, however, should it be proved that the letters "L. S." or the scroll were annexed to the instrument after its execution and were therefore not the seal of any of the other parties to it, the act might be regarded as such an alteration of the instrument as to avoid it both as a specialty and as a simple contract.[17]

It has been an elementary proposition that authority to execute a sealed instrument must also be in writing and under seal. Does this apply to all sealed instruments and, if not, why and where has the modification of the rule arisen? In *Worrall* v. *Munn*,[18] we read the following:

"It is a maxim of the common law that an authority to execute a deed or instrument under seal must be conferred by an instrument of equal dignity and solemnity; that is, by one under seal. This rule is purely technical. A disposition has been manifested by most of the American courts to relax its strictness, especially in its application to partnership and commercial transactions. I think the doctrine as it now prevails may be stated as follows, viz.: if a conveyance or any act is required to be by deed, the authority of the attorney or agent to execute it must be conferred by deed; but if the instrument or act would be effectual without a seal, the addition of a seal will not render an authority under seal necessary, and if executed under a parol authority or subsequently

[15](N. Y. 1896) 11 App. Div. 1; and see Wheeler *v.* Reynolds (N. Y. 1899) 44 App. Div. 571.

[16](N. Y. 1896) 5 App. Div 448.

[17]Metropolitan Life Insurance Co. *v.* McCoy (N. Y. 1886) 41 Hun 142; Siefke *v.* Siefke (N. Y. 1893) 3 Misc. 81.

[18](1851) 5 N. Y. 229.

ratified or adopted by parol, the instrument or act will be valid and binding on the principal. It is said that the rule as thus *relaxed* is confined in its application to transactions between partners; but it seems to me, that a distinction between partners and other persons in the application of the rule as relaxed and qualified by recent decisions, stands upon no solid foundation of reason or principle."

Who, we may ask, has been relaxing the principles of the common law? Clearly, the judges, when they have found "no solid foundation of reason or principle" to sustain them. This case was followed by *Ford* v. *Williams* and *Wood* v. *Wise*.[19] In the latter case an agent signed the principal's name to a contract to sell real estate and affixed a seal. As a seal was unnecessary to such a contract, the authority of the agent to sign the principal's name was proved by parol. A question naturally arises here regarding a bond. To be a bond the instrument must be sealed, and no unsealed instrument can be a bond, although it may be good as a simple contract.[20] This question, then, suggests itself: Must the authority of an agent to execute a bond be in writing and under seal, and if the instrument appears to be a bond executed by an agent and it turns out the agent's authority was not under seal, but by parol, would the bond be unenforceable or be good as a simple contract? Whether or not this has been answered by the case of *Peterson* v. *City of New York*,[21] need not be determined here. In that case the Aqueduct Commissioners had executed a contract for the City of New York under seal. The statute of limitations was pleaded and it was held in the lower courts that the action was barred by the six years period applicable to simple contracts, as the commissioners had no authority to annex a seal. The Court of Appeals took a different view and held that by usage, as well as under the Statute appointing the commissioners, they had authority, and that the twenty years statute of limitation applied, pursuant to § 381 of the Code of Civil Procedure. The agent's authority, therefore, is always an open question of fact in determining the effect which the seal shall have upon the instrument. If he had no authority to annex the seal it is a simple contract. If he had authority it is a spe-

[19](1856) 13 N. Y. 577; (N. Y. 1912) 153 App. Div. 223, affd. (1913) 208 N. Y. 586.

[20]People *v.* Wiley (N. Y. 1842) 3 Hill 194, 212; United States *v.* Stephenson's Exrs. (C. C. 1839) 27 Fed. Cas. 1305, 1306; Board of Education *v.* Fonda (1879) 77 N. Y. 350.

[21](1909) 194 N. Y. 437.

cialty, and we may assume that if that specialty is one which the law requires to be sealed the agent's authority must also be under seal. This case, however, did not deal with bonds, which, in their nature, must be under seal. In his opinion Judge Cullen took occasion to say that, "Though in many respects the effect of a seal has by recent statutes and decisions been very much impaired, nevertheless a sealed instrument still retains in law certain characteristics peculiar to itself."

Speaking of bonds, we may note another peculiarity in the law which has already been touched upon, and that is that where a statute requires a bond to be given, which of course implies a seal, yet an instrument executed in the nature of a bond but without a seal may, if acted upon, create a liability. In the Fonda case, above referred to, the defendant was elected treasurer of the Fairport Union Free School under an act of the Legislature which required him to give a bond, and provided that if no bond were given within ten days the office would be deemed vacant. The purported bond which was furnished was not sealed as required by law at that time. Judge Folger said:

"The writing upon which this action is brought is not a bond. It is in the fashion of one. It has a penalty and condition. It recites that it is under the hands and seals of the obligors. Yet there are no seals to it. There are places for them; and the letters L. S. to each name, which mark those places but do nothing more. It is not an instrument in strict compliance with the statute. When the Legislature said a bond, it meant a bond; which is a form of taking security well known to the law; from its characteristics having some sanctions not shared in by all written obligations, and thereby affording a more complete and binding, and higher form of security."

The instrument, however, was held to be a simple contract binding upon the sureties. In a previous case, *Kelly* v. *McCormick*,[22] an unsealed bail bond upon which a prisoner had been discharged was held good as a simple contract; but in *Tiffany* v. *Lord*[23] it was held that the giving of a bond in the form prescribed by the statute in relation to the Justice's Courts was necessary to confer jurisdiction upon the Marine Court of the City of New York to issue an attachment, and that an instrument without a seal was insufficient, and an attachment issued thereon was void.

In *Warrell* v. *Munn*,[24] above referred to, it had been stated

[22](1863) 28 N. Y. 318.
[23](1875) 65 N. Y. 310.
[24](1851) 5 N. Y. 229, 238.

that the instrument in question did not require a seal, was therefore an unsealed instrument in law although sealed in fact, and that the agent's authority to execute it could be proved by parol. It was further held that a conditional delivery of an executed instrument, although not required to be sealed, could only be made to a stranger and could not be made to a party. This was not followed in *Blewitt* v. *Boorum*,[25] where the doctrine was limited to such instruments as were by law required to be under seal. Judge Peckham speaks of them in his opinion as deeds conveying real estate or an interest therein, or agreements for the sale thereof. The action was brought upon a contract under seal, the defense being a delivery to the other party not to take effect as a contract until the happening of a certain event. The opinion limits or extends the rule of the Warrell case, as follows:—

"The instrument in this case was an ordinary agreement, not requiring a seal for its validity, and we think the rule as to sealed instruments, *however far it may be carried in regard to such instruments as require a seal for their validity,* should not be extended in any event to those cases where the instrument is in law not in the nature of a specialty, and where the presence of a seal is totally unnecessary to its validity."

This was written in 1894. In 1896 it became unnecessary to seal conveyances of real estate. Would this language so fit the case of an unsealed conveyance in fee as to now permit the conditional delivery thereof to the grantee? Probably not; but the reason would no longer depend upon the presence or absence of the seal, or the letters "L. S.," but more logically upon the nature of the transaction.[26]

The release is of equal dignity and importance with a deed to real estate. It requires a seal and, being an executed and not an executory instrument, the seal is conclusive evidence of a sufficient consideration. The release, therefore, is in the same class with the deed of real estate under the common law. But while a deed may not be given to the grantee in escrow or upon conditions, there may be a conditional delivery of a release to the debtor. The reason given for this distinction is to be found in *Stiebel* v. *Grosberg*.[27] The distinction which was there attempted to be made between the two instruments is not very convincing, and the grounds for it can hardly be said to be impressive. "A release,"

[25](1894) 142 N. Y. 357.
[26]Hamlin *v.* Hamlin (1908) 192 N. Y. 164.
[27](1911) 202 N. Y. 266, 273.

says the opinion, "or receipt, however, is perfectly good without a seal, provided the holder can show that full payment has been made therefor." When a holder can show full payment he needs neither receipt nor release.

The development of the rules appertaining to seals when annexed to promissory notes is indeed interesting. A seal to a note makes it a specialty. In *Clark* v. *Farmers' Woollen Manufacturing Company,*[28] it was held that a note for the payment of money under seal is not negotiable and that the effect of affixing the seal of a corporation is the same as when a seal is affixed by an individual; it raises the instrument to a specialty. In the case of *Weeks* v. *Esler,*[29] the Electric Power Company executed promissory notes upon which was impressed a corporate seal. Of course, if this were a sealed instrument it lacked the elements of negotiable paper, and so the defense was that the notes were sealed and non-negotiable. The court was face to face with a sealed promissory note, and how was it to meet the situation? In this way, quoting from the language of the opinion:—

"We agree with the learned justices below that, in the absence of any recital that the seal of the corporation was affixed and of any evidence to show the fact of sealing, or that the corporate seal was impressed, or that it was, in fact, the corporate seal which thus appeared, these notes could not be regarded as sealed instruments . . . Assuming that the presence of the corporate seal upon such an instrument, or note, could affect its negotiability,—a proposition as to which we entertain grave doubts, but which we do not feel called upon now to determine—we think that its mere presence, unaccompanied by a single fact evidencing that the company's officers intended to, or did, affix it, was quite insufficient to have any effect upon its apparent character."

A year and a half later there came before the same court the case of *Chase National Bank* v. *Faurot.*[30] The facts were similar to those of the Weeks case and the same defense was pleaded, and, while the decision reached was the same, the court liberalized its views regarding the effect of the seal.

"In the case at bar," says the opinion, "we shall assume for the purposes of this appeal that the note in suit was a sealed instrument, and will place our decision on broader grounds than those laid down in *Weeks* v. *Esler* . . . In view of the law as settled by this court and the courts of other jurisdictions as to

[28](N. Y. 1836) 15 Wend. 256.
[29](1894) 143 N. Y. 374.
[30](1896) 149 N. Y. 532.

what instruments are negotiable, we hold that the commercial paper of a corporation negotiable in form does not lose the quality of negotiability by having attached thereto the corporate seal."

The relaxation of this rule as to corporations has not been extended to individuals,[31] and it still remains the law that a promissory note sealed by the maker becomes a specialty and ceases to be commercial paper; but even then the presence of the seal is not conclusive and the rule is of doubtful application. In the *Matter of Pirie*,[32] it appeared that the promissory note in question bore the signature of Adele M. Downing and after the signature a seal. Was it an instrument to which the six years or twenty years statute of limitations applied? This is the answer expressed in the opinion:

"There is nothing in the body of the note or of the signing of it which indicates that it was intended to be a sealed instrument. Ordinarily a seal affixed to a paper in the form of a promissory note changes it into a sealed instrument, which, under the Statute of Limitations, may run for twenty years; but the mere attaching of a seal after the signature does not raise a presumption that the note is a sealed instrument, unless there be a recognition of the seal in the body of the instrument, by some such phrase as 'witness my hand and seal' or 'signed and sealed.' The reason for this is that the mere attaching of a seal after a signature without any recognition of it in the body of the note or in connection with the signing, *in the absence of evidence showing the time when, and the person by whom, the seal was affixed,* would open the door to frauds and forgeries and enable evil disposed persons to prevent the running of the six years' Statute of Limitations, by merely attaching at the end of the note a seal. Under such circumstances a seal is regarded merely as surplusage and the character of the note is not changed."

The opinion, however, quotes with approval a West Virginia case which held:

"To constitute a sealed instrument, there must be a seal or scroll affixed, and some recognition of it in the instrument, or some evidence of it *aliunde*; but it can never be maintained that such evidence, whether by the proof of witnesses or acknowledgment of the party, will not supply the place of such recognition."

We have it then that a promissory note with "L. S." after the name of the maker is not a sealed instrument and that the six years statute of limitation applies, but that oral evidence may show that the letters were put on at the time of the making and

[31]Chase National Bank *v.* Faurot (1896) 149 N. Y. 532, 536.
[32](1910) 198 N. Y. 209, 214.

then it becomes a sealed instrument to which the twenty years limitation applies. Is it not difficult to determine which rule presents more readily the opportunity for fraud, that which presumes the seal to have been annexed by the maker, or that which presumes the contrary?

Another incident regarding notes and sealed instruments is marked in the case of *Hulbert* v. *Clark*,[33] where it was decided that although eight promissory notes of $500 each were barred by the six years statute of limitations and there could be no recovery whatever upon the debt, yet the mortgage under seal given to secure these notes, although containing no covenant to pay them, could be foreclosed any time within twenty years. The same rule was applied in *Dinniny* v. *Gavin*.[34]

However much the courts in some instances have relaxed the rules of the common law upon this subject, they have adhered very strictly to the principles enunciated in *Briggs* v. *Partridge*,[35] that none but the parties can be held to a sealed instrument. Whether the rule crystalized out of the reasoning or out of the incidents of such cases as *Lawrence* v. *Taylor*, *Townsend* v. *Hubbard*, and *Randall* v. *Van Vechten*,[36] is not now important to determine, as it is here to stay for the present, in spite of the numerous efforts of the Bar to ameliorate it. The state of the law today upon this point is as follows: A principal may be charged upon a written parol executory contract entered into by an agent in his own name within his authority, although the name of the principal does not appear in the instrument and was not disclosed, and the party dealing with the agent supposed that he was acting for himself; and this doctrine obtains as well in respect to contracts which are required to be in writing, as to those where a writing is not essential to their validity. If, however, a seal be put to the instrument, agency cannot be proved nor the real principal held. Thus, if an unsealed contract to sell real estate is signed by the agent in his own name, and the fact that he is acting for another and not for himself appears nowhere upon the face of it, the real principal can always sue and be sued upon the instrument. But if it should happen that the printed letters "L. S." appear after the agent's name, all

[33](1891) 128 N. Y. 295.

[34](N. Y. 1896) 4 App. Div. 298.

[35](1876) 64 N. Y. 357.

[36](N. Y. 1843) 5 Hill 107; (N. Y. 1842) 4 Hill 351; (N. Y. 1821) 19 Johns. 59.

would be different. The principal could neither sue nor be sued. The absurdity of this is apparent upon the face of the statement, and the danger and pitfall of such a doctrine in business transactions is realized when we pause to consider how many printed forms of agreements have the letters "L. S." stamped upon them, or how easy it is to make the scroll. The numerous instances where the courts have been appealed to for the modification of this rule evidence not only its deep intrenchment in the law but also the restiveness of the Bar in submitting without protest to its application to the facts in hand.[37]

And yet in spite of the rigidity of this rule there are certain exceptions to it. One is that it does not apply to ante-nuptial agreements.[38] It was also held inapplicable in *Beardsley* v. *Duntley*,[39] a case of fraud, where a wife not a party to her husband's contract, which he made as her agent, recovered a certain farm not included in the sealed instrument. But even fraud, it was said later, in *Denike* v. *De Graaf*,[40] would not enable a principal who had not signed a sealed contract for exchange of lands to recover damages for deceit and false representations in procuring its execution.

It was suggested in the Briggs case that where the principal could not be held upon the contract, because it was sealed and had not been signed by him, that under certain conditions he might be held in assumpsit, that is, in an action upon a simple contract. These conditions were stated to be that the principal's interest must appear upon the face of the contract, that he must have received benefit under it, and have ratified and confirmed it by his acts. If all these three elements were present, then the principal might be held; but if only one of them appeared, as, for instance,

[37]The following cases may be read with much profit as illustrating the tenacity with which we sometimes adhere to a rule when every reason for it is gone and every reason against it is present: Schaefer *v.* Henkel (1878) 75 N. Y. 378; Whitford *v.* Laidler (1883) 94 N. Y. 145; Henricus *v.* Englert (1893) 137 N. Y. 488; Spencer *v.* Huntington (N. Y. 1903) 100 App. Div. 463, (1905) 183 N. Y. 506; Williams *v.* Magee (N. Y. 1902) 76 App. Div. 512; Van Allen *v.* Peabody (N. Y. 1906) 112 App. Div. 57; Stanton *v.* Granger (N. Y. 1908) 125 App. Div. 174,—especially the dissenting opinion; Klein *v.* Mechanics' & Traders' Bank (N. Y. 1911) 145 App. Div. 615.

[38]Case *v.* Case (1911) 203 N. Y. 263.

[39](1877) 69 N. Y. 577.

[40](N. Y. 1895) 87 Hun 61, affd. 152 N. Y. 650.

that he had received all the benefit of the contract and still held it, there would be no method known to the law to reach him.[41]

Surely the time has arrived for the State of New York to have some scientific arrangement of the law regarding sealed instruments. The twenty years statute of limitations, and the liability of principal or agent, should not depend entirely on the presence or absence of a seal. Rather, we should follow the doctrine as it has developed regarding escrow and classify instruments according to their nature and importance. The courts, even with the power, when they feel so inclined, to relax rules of the common law or to reverse former decisions,[42] cannot be looked to for relief in this matter, as departure from the common law creates exceptions, and exceptions breed confusion. Over one hundred years ago the following words were penned by an eminent jurist of Pennsylvania:[43]

"The word seal has crept into the acts of the legislature in many cases without meaning or use. It was introduced as a term of course, or supposed to have some magic in it, which baffled the examination. Might it not be advisable by an act of the legislature to reduce the necessity of sealing to *corporate bodies,* who have seals, or are supposed to have them. It is the *hand writing* of an individual that must be proved, and not his seal; and why then continue the necessity of adding something that bears the name? The mischief is, that individuals do not always know where to use seals, or where they may do more harm than good."

Many states have abolished the use of the private seal such as, Arkansas, Indiana, Kentucky, Minnesota, Nebraska, Ohio, Rhode Island, Utah and Washington.

Would it not be wise and in the interests of a scientific and uniform administration of the law for the State of New York also to do away with the use of private seals and abolish the distinctions between sealed and unsealed instruments?

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NEW YORK SUPREME COURT.

[41]See Klein *v.* Mechanics' & Traders' Bank (N. Y. 1911) 145 App. Div. 615.

[42]See Fitzwater *v.* Warren (1912) 206 N. Y. 355.

[43]Cooper *v.* Rankin (Pa. 1813) 5 Bin. 613-616.